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COMMITTEE ON JUDICIARY

February 9, 2006

LB 1101, LR 274CA, LB 1169, 1009, 1075, 1146

The Committee on the Judiciary met at 1:30 p.m. on Thursday, February 9, 2006, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1101, LR 274CA, LB 1169, LB 1009, LB 1075, and LB 1146 and gubernatorial appointments. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our ninth day of committee hearings. We have seven bills today and two confirmation hearings. I'm Pat Bourne. I'm from Omaha. To my left is Senator Flood from Norfolk; next to Senator Aguilar from Grand Island; the committee clerk is Laurie Vollertsen; the committee's legal counsel is Jeff Beaty; and to my far right is Senator Dwite Pedersen from Elkhorn. I'll introduce the other members as they arrive. Please keep in mind that Senators have other legislative business to attend to, so if they happen to come or go during your testimony, please don't take offense to that. They're simply conducting other legislative business. If you plan on testifying on a bill today, we're going to ask that you use the on-deck area. Please sign in in advance at that table there with the yellow signs. Please print your information so it's easily readable and can be entered accurately into the permanent record. Following the introduction of each bill, I'll ask for a show of hands of those individuals wishing to testify on that measure. We will first hear, and this will go for the hearings as well, we'll have the introducer of the bill. We'll take proponent testifiers, opponent testifiers, neutral testifiers, and then the senator, on the bills anyway, will be allowed to close. When you come forward to testify, please clearly state and spell your name for the record. All of our hearings are transcribed. Your spelling of your name will help the transcribers immensely. Due to the large number of bills we have here in the Judiciary Committee, we do utilize a timing light system. Senators introducing bills get five minutes to open, three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of any questions the committee may ask you. The blue light comes on at three minutes. The yellow light comes on as a one-minute warning, and then when the red

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 2

light comes on, we ask you conclude your testimony. The rules of the Legislature state that cell phones are not allowed, so if you have a cell phone, please disable it. Reading someone else's testimony is also not allowed. If you have testimony from someone that you would like to enter into the record, please give it to us. We'll make it a part of the record, but we would prefer if you didn't read that testimony. With that, I think we'll go ahead and take up the confirmation hearings. And first up is Ms. Rosalyn Cotton for the Board of Parole. Welcome. Did I pronounce it correctly, Rosalyn?

CONFIRMATION HEARING ON
ROSALYN COTTON TO THE
BOARD OF PAROLE

ROSALYN COTTON: (Exhibits 1, 2) Yes, that's correct. Good afternoon, Senators. My name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n, and I'm here this afternoon seeking confirmation of my appointment by Governor Dave Heineman. My appointment to this board was to fill the balance of a three-year term of former Chairperson Ken Vampola. This appointment is in effect until September 9, 2008. A little bit about my background: I am a graduate from Wayne State College, a B.S. degree in prelaw sociology, and I received a master's degree from the University of Nebraska at Omaha. The master's degree was in urban studies with an emphasis of criminal justice. 1991 is when I started my career in corrections. I started with, actually '81, I started with Lancaster County Corrections, and then I was promoted into Lancaster County Community Corrections. Between the 1983 and '84, I moved to Omaha and started working for the Omaha Correctional Center as a correctional officer, and worked my way up through the ranks, ending there as a unit caseworker, actually manager. And then in 1991, I left there and became a parole officer. And I was a parole officer for the state of Nebraska until 2002. Between the years of 2001 and 2005, I was a criminal justice instructor for four different schools. Three, actually three community colleges and one university, Bellevue University, Hamilton College, Northeast Community College, and the Indian Community College. Now, since August 1 of 2005, I became an active and very effective board member, and this certainly has been an honor and a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 3

pleasure serving the state of Nebraska. My colleagues have been very supportive during this time, and I appreciate immensely the support from the Board of Parole as well as the support from others. In my opinion, I consider parole as a very important component of the criminal justice system. And since I've been serving on the Board of Parole, I have been involved in approximately 1,608 offender hearing, and approximately 595 offender reviews, basically. Senators, I will close and ask for your support in my newly appointment to the confirmation of this position. I believe that my lengthy correctional experience and my philosophy is sufficient enough to be confirmed today. I will continue to work hard and use good judgment when making decisions. Good judgment and integrity is very crucial in this position. My goals and objectives will always include public safety, and public safety is number one and should be taken very seriously. I believe that this position will be challenging and rewarding. I am truly honored and humbled to have this opportunity to serve as a member of the Nebraska Board of Parole. Thank you, Senators, and at this time I want to answer any questions that you may have.

SENATOR BOURNE: Thank you. Are there questions for Ms. Cotton? Senator Flood.

SENATOR FLOOD: Chairman Bourne, thank you. Ms. Cotton, I just want to tell you that I talked to the folks at Northeast Community College in Norfolk, and they said you did an excellent job and were happy that you received this appointment, and encouraged me to vote for you. So you've got some fans in my district. You did a nice job. Thank you.

ROSALYN COTTON: Thank you very much, Senator.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Ms. Cotton, I'm going to be as cordial as I can with you, but at the same time, letting the committee know that I've known Ms. Cotton for many years. She has served the state well on many, many areas. But I do have concerns with parole, as I usually do, and it has nothing to do with any individual or as a group, because I think the committee needs to know that the full Parole Board is here today. And

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 4

I appreciate the whole board coming. I'm going to ask you a couple of questions, Ms. Cotton, and I'll get a couple for each one of you, because I know three of you will be up in that chair today, one way or another. Do you see parole as being a way of protecting the state or as more of a gateway for people to get back, coming back into community.

ROSALYN COTTON: Well, I actually think it's both. It's protecting the state because, again, when you have parole, we basically look at the whole concern of public safety. And it's definitely a gateway because transitioning needs to be involved. So I think it can be basically both.

SENATOR Dw. PEDERSEN: How do you see parole as a definition. Define parole.

ROSALYN COTTON: Basically, on a case-to-case basis, I see parole as an alternative, as a transition into the community, seeking the whole concept behind rehabilitation with good programming based on, I guess, their needs as an individual, case-by-case.

SENATOR Dw. PEDERSEN: There's more and more proof across the country, and many states, I've got lots of information today because of the bill I'll be introducing after we're through with your confirmation, and I'm going to vote for you, dear. I've been with you a long time. Rosalyn and I have worked together in many, many, many cases for a long time. And I see absolutely no reason in the world, any slightest bit of a reason that I would not vote for you. But I want to start getting some things on the record about parole. Do you see parole as safer for society than "jamming," or reaching the end of their sentence?

ROSALYN COTTON: I think parole is definitely safer. And I think it's safer because of the transition. Every offender needs transition. Every offender needs to address the whole aspect of rehabilitation. So I think it is definitely a plus, no matter at how we look at certain things. And again, I would like to look at that on a case-to-case basis.

SENATOR Dw. PEDERSEN: Do you think we have enough parole officers, parole board members in the state of Nebraska to handle the caseloads that you're handling?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 5

ROSALYN COTTON: Well, yes and no. And I say that because, as we continue to parole individuals, our workload increases. So, yes, we have some and we can have more. However, because of, probably, law or what have you, we don't at this time, I guess.

SENATOR DW. PEDERSEN: Yeah, we'd have to change that. Thank you, Rosalyn. Thank you for what you have done for our state before now, and now.

ROSALYN COTTON: Thank you, Senator.

SENATOR DW. PEDERSEN: And I'm very pleased to have you there.

ROSALYN COTTON: Thank you.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Combs from Milligan and Senator Friend from Omaha. Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Rosalyn, first of all, let me say thank you for your service to the state. I read your resume pretty thoroughly, and I must say I'm very, very impressed, and I can't imagine anybody else who would be more qualified for this position than yourself. One question I had, and that would be, is, would you be willing to work with the Legislature somewhat? Right now, we're right in the middle of a lot of community corrections ideas and processes and how we want to do things. And I think we all realize the extensive need for more rehabilitation efforts. And I guess what I would ask you if you would make it a goal to make sure that the proper people get recommended for these other facilities once they're up and running and in place. And would that be a priority for you, I guess I would ask.

ROSALYN COTTON: I think anything that comes within the job, I will be more than willing to address, whatever issues and maintain any responsibilities that I must have. Yes, I would be.

SENATOR AGUILAR: Thank you. That's all I have.

SENATOR BOURNE: Thank you. Senator Flood.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 6

SENATOR FLOOD: Thank you, Chairman Bourne. Ms. Cotton, Senator Bourne has introduced a bill relating to sex offender. And that has, sex offenders have to present a dilemma for parole, certainly probation, the monitoring of sex offenders. What can parole do to protect the public from a pedophile that has good behavior, but is treatment resistant or succeeds in treatment, but you know those issues are still there? How does parole deal with a sex offender under our current law, unamended?

ROSALYN COTTON: I think the first and foremost important thing is surveillance, electronic monitoring, anything that is going to enhance public safety, which parole officers will actually be able to attend to those particular responsibilities. Programming, monitoring, making sure that they are involved in the programming that they are supposed to be involved out in the community. I think, those are the two foremost important things that I would see we could protect individuals from.

SENATOR FLOOD: As a member of the Parole Board, do you, you know, should you be appointed, confirmed, I should say, but on the Parole Board, how does the Parole Board, what kind of questions are asked? I guess I'm, I've never been at a hearing. I don't know the process. But if you have somebody that's been, maybe diagnosed as a pedophile?

ROSALYN COTTON: You know, case-by-case, once again, I think the most important questions to address would be those per se programs that they are participate in while they're in the institution. That's where we zero in on that's most important. Because if we can't see that programming is being addressed, then I'm sure that, and I'm only one board member, I'm going to say that I'm not going to be very comfortable with paroling you to the community. So programming and public safety are very, very important.

SENATOR FLOOD: Thank you very much.

ROSALYN COTTON: Um-hum.

SENATOR BOURNE: Further questions? Seeing none, thank you.

ROSALYN COTTON: Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 7

SENATOR BOURNE: Appreciate your willingness to serve in this capacity.

ROSALYN COTTON: Thank you very much.

SENATOR BOURNE: Are there any proponents of Ms. Cotton? Are there any opponents? Any neutral testifiers? That'll conclude the confirmation hearing for Ms. Rosalyn Cotton. Miguel Gomez, also a confirmation for the Board of Parole. If I mispronounced your name, I apologize.

MIGUEL GOMEZ: Okay. Good afternoon.

SENATOR BOURNE: Welcome.

CONFIRMATION HEARING ON
MIGUEL GOMEZ TO THE
BOARD OF PAROLE

MIGUEL GOMEZ: (Exhibit 3) My name is Miguel Gomez, M-i-g-u-e-l, last name is Gomez, G-o-m-e-z. I'm from Lincoln, Nebraska. Mr. Chairman Senator Bourne, distinguished members of the Judiciary Committee, I'm in front of your committee seeking confirmation to another term of the Nebraska Board of Parole. Six years ago, Governor Johanns appointed me to the board and I came in front of this committee, then chaired by Senator Brashear, and I obtained a positive confirmation. This year, Governor Heineman has reappointed me to the board, and once again, I'm in front of your committee seeking your committee's support. During the last six years that I've been on the board, we have seen approximately 30,000 inmates, which includes reviews, parole hearings, and parole revocations. This averaged to about 350 monthly reviews, 102 parole hearings, and 32 hearings hearing revocations. This experience has given me an insight into the parole process, and what works in dealing with inmates. During this period, I have treated inmates with a respect and strong desire to help them become successful citizens once they are out of prison. I'm a strong believer in the parole process. Parole is a privilege which may be granted to an offender to serve a portion of the court-imposed sentence under supervision in the community. Furthermore, acknowledging

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 8

the purpose of parole to protect the rights of society and to provide assistance to offenders under a period of supervision, and this is to reenter the mainstream of society as a productive, law-abiding citizen. During an offender's review, the board interacts with the inmates and information that is provided in a personal profile of the offender, we evaluate the progress and conduct and make recommendations involving a need of treatment, vocation, or educational programs, and determine the readiness for release into society on parole. No other process, in my opinion, provides the solution to the transition from prison to freedom. Thank you for the opportunity to appear in front of this committee, and I'll be more than happy to answer your questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Gomez? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Gomez...

MIGUEL GOMEZ: Yes, Senator.

SENATOR Dw. PEDERSEN: ...I don't know you as well I do with Ms. Cotton, but I do thank you for what you've done for the state, and you've served us well. I'm going to have one basic question for you, or a scenario, and I wish I could ask each one of the Parole Board members this, because this is a, just a little bit of a problem that I have. It's not a little problem. It's one that I hear about constantly in the people that write to me. I have just been sent to prison for two to four years for burglary. The judge, as I'm standing in front of him as he sentences me tells me, I am giving you two to four years for your crime. If you are good in prison, you will be back on the streets in one year. And I run off to prison, and I do everything that the prison wants me to do. And at year's time, I come up in front of the Parole Board and the Parole Board says, due to the nature of your crime, we feel it would be, whatever that checkoff box says, but it would not be safe for society for you to come back into, basically is what it says. How would you, how do you see that as being protecting society or in rewarding the inmate?

MIGUEL GOMEZ: First, Senator, if the person or the inmate

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 9

has done what is required, he has done the programming, there's no misconduct reports, and the board determines that he is ready for parole, we do parole him.

SENATOR Dw. PEDERSEN: We parole some.

MIGUEL GOMEZ: We parole the...

SENATOR Dw. PEDERSEN: But there's quite a few that that box gets checked when they've done everything they're supposed to do, they've done their very best, and it was let's say a more serious crime, I used something, burglary, but burglary to me is pretty violent if you've ever been burglarized, you obviously, but the judge, according to the law, told them, you are serving two to four years, which means you've got to have one year at the lower number to be eligible for parole, and tells them, you'll be out in a year. And they come up to a year, they come to whatever that parole eligibility date is, and they've been good, and they don't get out.

MIGUEL GOMEZ: Well, Senator, I'm not sure...everyone that I can remember that comes in front of us that has done what the personalized plan requires, they have stayed away from misconduct reports, I don't see any problem paroling that person, and we do go ahead and parole that person. There has to be something more to it for us to deny, for us to say that.

SENATOR Dw. PEDERSEN: Something more to it since they've been in the system...

MIGUEL GOMEZ: That he...

SENATOR Dw. PEDERSEN: ...or before they were in the system?

MIGUEL GOMEZ: No. We don't take into consideration that much before the prison, before he comes to prison. It is that time he has been in prison is what we take into consideration.

SENATOR Dw. PEDERSEN: How about if the crime is different than burglary? Let's talk about assault, domestic violence, child abuse, sex offenses. Is it the same? Do you measure it the same if they have done what they were told?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 10

MIGUEL GOMEZ: I would take out the sex offender programming because that is a little different. It's lengthier programming that is required for them. But, I'm speaking for myself, and I, if I see an individual that comes in front of us that has done the required programming and maintained the number of misconduct reports to a minimum, I don't see how we can deny parole.

SENATOR Dw. PEDERSEN: Would you see it, Mr. Gomez, as tying the Parole Board's hands if we passed a law saying you couldn't use that statement due to the nature of your crime? Would that being tying the hands of the Parole Board? And I'm asking you because you're sitting there, but I'm asking of the whole Parole Board. And these are things I want on the record. I don't want to be pushing you in a corner here. I'm going to support you, too, Mike. I mean, I don't have any problem with that, but...

MIGUEL GOMEZ: No, I don't see any problem. That statement is used mainly when the individual for some reason declines the programming, has an excessive amount of misconduct reports, and that is when it is used. Otherwise, it's not used. But the majority of individuals that we see, they go to prison without misconduct reports, doing the programming, and I was just thinking about yesterday when I was working my cases, I had an individual that went through prison and had done everything that we had asked, no misconduct reports, he signed up for every program that is available in prison, and, but there's another young man that wasn't right there. He had 19 misconduct reports, 270 days lost to good time, it'd be impossible for me to parole that person.

SENATOR Dw. PEDERSEN: I would not parole that kind of case either, Mike. I mean, I...

MIGUEL GOMEZ: Exactly. And that's really what the ones that we don't parole is that that individual comes in front of us that is not interested in programming and has a lot of misconduct reports.

SENATOR Dw. PEDERSEN: Do you believe that it would be, that society would be safer if we had people gradually come back into society with some supervision, or jam their time?

MIGUEL GOMEZ: Well, it's always better to have it under

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 11

supervision, I think. I think we all appreciate your concerns about the whole system of criminal justice and I think we're all in the same boat. We all want to see this individual succeed when they go out. It's like seeing a kid, part of you going out, and you hope they do good on parole.

SENATOR DW. PEDERSEN: Thank you. By no means, again, do I want to say that I'm picking on the board. This is a time when you got the whole Judiciary Committee here, the whole Parole Board, and I think it's time that we can finally talk and have some questions and hear some of the things that I think are moving forward, and I personally hope we can keep going forward.

MIGUEL GOMEZ: And we're always willing to work with you and we're always willing to meeting with you or any other member that would like to seek information.

SENATOR DW. PEDERSEN: I'm still going to be pushing on the numbers. We got to get more people out with supervision.

MIGUEL GOMEZ: And we do that. We are working on that, Senator. We work, we all believe in the parole process. We all want to see all these young people, women, out on parole. But, at the same time, you know, public safety, like Ms. Cotton said, it's a priority for us.

SENATOR BOURNE: Thank you. The committee has been joined by Senator Chambers. Senator Combs, a question?

SENATOR COMBS: Yes, Mr. Gomez. Thank you for serving in the Army, by the way. I always thank veterans. I think that's wonderful. I was just looking at your years of service here, and begin with the Department of Revenue 23 years, then you were on the Board of Parole for ten months, and then went back and worked in Department of Revenue for about 16 years. I just wondered, what was the break about in there, where you weren't able to be on the Parole Board, but you were for a period of time in there.

MIGUEL GOMEZ: In 1989, there was a resignation on the Parole Board, and Governor Orr appointed me to the board. That was the last year of her term. And in November, she lost the election to Senator Nelson, and I was not confirmed

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 12

yet.

SENATOR COMBS: Oh.

MIGUEL GOMEZ: So, Governor Nelson decided that he wanted his own appointees, so he was kind enough to let me go back to Department of Revenue and work at the Department of Revenue. And that's the break, so I did serve about ten months. And then when there was an opening six years ago in August, a former member retired, I reapplied again, went through the process, and that's when Governor Johanns appointed me to the board.

SENATOR COMBS: Thank you for agreeing to serve in that capacity. That's an important...thank you.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you. Mr. Gomez, thank you for being here today. You and I had an extensive conversation in my office, and I appreciate that. And I want to expand upon that a little bit here. We all know here the overcrowding of the Corrections Department in the state of Nebraska, what a problem that is. Do you see community corrections and some of the rehabilitative efforts as the best solution to ease that overcrowding in our state?

MIGUEL GOMEZ: I think I do, Senator, especially community corrections. There's a lot of good programs out there that are coming up. Right now, there is a reentry program that is through the Department of Corrections, the community corrections. And I think that is going to alleviate the overcrowding. And as well as, we are trying to do everything possible to alleviate the overcrowding, too. And I did see, there was a report about, I haven't read the whole report yet, but the report that was given to the community corrections about the Norfolk achievement center that is being planned.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

MIGUEL GOMEZ: Thank you very much.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 13

LB 1101

SENATOR BOURNE: Appreciate your service. Are there any testifiers in support? Are there any testifiers in opposition? Any neutral testifiers? That will conclude the hearing of Mr. Miguel Gomez, and with that, we're going to move to Legislative Bill 1101. Senator Pedersen to open on that. So we have a sense of how many testifiers we have in the audience, could I have by a show of hands those individuals here that would like to testify in support? Any in support of this bill, proponents? Any in opposition? I see one. Are there neutral testifiers? I see none. So we have one testifiers after Senator Pedersen. Welcome.

LB 1101

SENATOR DW. PEDERSEN: (Exhibit 5) Thank you, Mr. Bourne, colleagues on the Judiciary Committee. For the record, my name is Dwite Pedersen, representing the 39th Legislative District. I'm here today to introduce to you LB 1101. When a person is sentenced by a court of law to a period of time in our state correctional institutions, in most cases, they are given a range of time. For example, the judge might say, a period of two to four years. Using the example, that means that this person will be parole-eligible in one year, half of the bottom number, which we were just visiting about, and has a tentative release date two years out if he or she earns all of the good time available. That is, half of the top number. Of course, just because a person is eligible for parole does not mean they will be paroled. Many of our inmates "jam" their time, which means they get out on their release date and are never on supervised release. I strongly believe in the concept of parole. It is an opportunity for offenders to transition back into their communities while under the supervision of a parole officer. It gives them the opportunity to get a job, resume their responsibility for themselves and/or their families, and to find a place to live, all while on a short leash, so to speak, as they have to closely follow the rules laid out by the parole board in order to remain on parole. I firmly believe that this type of arrangement benefits public safety. And if I had my way, all inmates would have to serve at least a few months of their sentences on parole because I believe that it is good for them, good for their families, good for their communities, and the best way to ensure the safety of the public. Unfortunately, the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 14

LB 1101

majority of the prisoners getting out of our correctional facilities currently "jam" their time. According to the Department of Correctional Services, last year 852 inmates were paroled while 1,366 were just turned loose with no one knowing where they were going or whether or not they had a plan in place as to how they intended to lead their lives as law-abiding citizens. LB 1101 is my attempt to address many of the issues that I have identified and struggled with during my 13 years in the Legislature, now 14. It is a mandatory parole bill. I prefer to call it supervised release. The bill provides that a parole-eligible inmate shall be released, one, on parole when they are within 180 days, six months, of their mandatory date of discharge. Inmates who are incarcerated because of sex offenses would be exempt from this mandatory legislation. That does not mean that they could not be paroled, only that it would not be automatic. They would have to go before the board as they do now to convince the board they could safely reenter the community. Any offender released pursuant to this law would have to follow all conditions of parole outlined by the board. If they did not do so and their parole was revoked, the bill allows the board at their discretion to re-parole them at anytime before their mandatory date of discharge. That's what this bill does. This is why I believe it is a good idea. While most of claim to be in favor of parole as a general concept, it just does not seem that we are acting on that belief. The numbers of inmates incarcerated are increasing, and we are fast approaching the 140 percent ceiling outlined in LB 46 of 2003 for mandatory releases in order to keep our prison population down. At the same time, our parole numbers are down. I believe that this bill is a good idea because it promotes public safety. If the public understands that these inmates will be released in six months regardless of whether or not they received discretionary parole, I believe they will support the concept of keeping them under supervision in the community for a period of six months, and feel that it is a benefit, not a detriment, to public safety. In addition, I believe that it will be of great benefit to the offenders that they will have to take the steps necessary to make a successful transition back into their communities. Parole conditions usually include requirements to meet family responsibilities, find approved employment, stay within certain geographic limits, reside in an approved place, submit to chemical testing, go to recommended treatment, and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 15

LB 1101

report regularly to their parole officer. A period of six months gives the inmate the time necessary to establish a different way of life, and I think that having six months of supervision will be of great benefit to offenders. In addition, having this piece of legislation in place will give inmates something to look forward to, a goal of getting out six months ahead of time. And finally, I believe that this bill will be of benefit to the Parole Board. The board works hard, but they are overwhelmed by the sheer numbers of inmates that they must see every year. If we were able to pass legislation that would make it mandatory that the last few months of incarceration be served on supervised parole for those that will be getting out anyway, it would free the board to concentrate their efforts on looking at the harder cases, those that need a little more research and attention. Board members have frequently expressed their concern about being held responsible for the actions of inmates who are paroled and then reoffend. I believe that this bill would help to spread the responsibility for making these decisions to the Legislature and the courts. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Pedersen? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Senator Pedersen, thank you for bringing the bill. I got to admit, I don't know everything about how parole works. And I guess I'm just wondering, when it says in your bill, a committed offender who is otherwise eligible for parole, is that eligibility determined by the Parole Board, or is that a certain set of criteria that they have to meet, or what makes you eligible for parole? Is it just a date?

SENATOR DW. PEDERSEN: It's the date. You're eligible for parole half the small number unless you're serving a flat sentence.

SENATOR FLOOD: I guess, for nonviolent drug offenders, it makes a lot of sense. The situation I'm interested in, say you have somebody that, oh, second-degree assault, first-degree assault, serious enough to warrant, you know, two to four in prison. Victim has had complications. They don't want the person released. Can they slow the process down? I mean, if it was a two- to four-year sentence, they'd be eligible for parole in two years.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 16

LB 1101

SENATOR DW. PEDERSEN: Yes.

SENATOR FLOOD: And this would make it...

SENATOR DW. PEDERSEN: What was that again? The scenario was two to four?

SENATOR FLOOD: Two to four, yeah.

SENATOR DW. PEDERSEN: They're eligible in one.

SENATOR FLOOD: Okay.

SENATOR DW. PEDERSEN: After the lower number.

SENATOR FLOOD: So they'd serve six months?

SENATOR DW. PEDERSEN: Two to four, one year.

SENATOR FLOOD: Okay. But under this, if they have 180 days mandatory...

SENATOR DW. PEDERSEN: This would be, if they're "jamming" their sentence, and "jamming" their sentence is half the upper number.

SENATOR FLOOD: Oh.

SENATOR DW. PEDERSEN: That would be two years.

SENATOR FLOOD: Okay. So they'd get out...

SENATOR DW. PEDERSEN: They're coming out, unless they lose good time. The part that we're not talking about here is good time. If you get, you get so much good time just when you hit the gate, when you're coming in, coming in the gate, you get so much good time. But you can lose that. And you can lose that by the department can take it away because of drug use, because of any what we call MRs, misconduct reports. They don't always take it for minor misconduct reports, but when you, as soon as you take away good time, that moves the jam date out, the mandatory release date.

SENATOR FLOOD: So this isn't going to move up any other, if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 17

LB 1101

they miss a parole opportunity because of, for whatever reason the Parole Board says, you're not getting out. If they're going to get out anyway in six months, you're saying, we'll let you out six months early.

SENATOR Dw. PEDERSEN: Then the Parole Board doesn't even have to take the blame for it.

SENATOR FLOOD: So like in a 20- to 30-year sentence, if someone's eligible for parole in ten, if I'm getting this right...

SENATOR Dw. PEDERSEN: What was the sentence again?

SENATOR FLOOD: Twenty to thirty years.

SENATOR Dw. PEDERSEN: Twenty to thirty years, they'd be eligible in ten.

SENATOR FLOOD: Okay. And then 15, they have "jammed" their time.

SENATOR Dw. PEDERSEN: Yup.

SENATOR FLOOD: So, fourteen and one-half years into their "jamming," their sentence, they're out.

SENATOR Dw. PEDERSEN: They would automatically report to the parole administration.

SENATOR FLOOD: And there's no supervision for somebody if they "jam" their time and they're out.

SENATOR Dw. PEDERSEN: Once they "jam," you walk out of the gate.

SENATOR FLOOD: Okay.

SENATOR Dw. PEDERSEN: You're off paper, that's the word is...

SENATOR FLOOD: Those may seem like remedial questions...

SENATOR Dw. PEDERSEN: ...in (inaudible) corrections.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 18

LB 1101

SENATOR FLOOD: ...but it helps me understand.

SENATOR Dw. PEDERSEN: No problem. No problem.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions? Thank you.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: First testifier in support. Welcome.

RICHARD HEDRICK: I'm Richard Hedrick and I'm for LB 1101. This bill will relieve people that are incarcerated. We have too many people in jail. They don't get out when they should. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Other testifiers in support? First testifier in opposition. Welcome.

ESTHER CASMER: (Exhibit 4) Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Esther Casmer, E-s-t-h-e-r, last name Casmer, C-a-s-m-e-r. I'm chair of the Nebraska Board of Parole, and I am here in respectful opposition to LB 1101. The Board of Parole promotes both public safety and institutional safety by providing for only qualified individuals who have participated in appropriate programs and who have demonstrated positive behavior in the Department of Correctional Services. This process allows us to identify appropriate candidates for successful transition into the community. LB 1101 would require mandatory release of inmates who would otherwise have to serve the remainder of their sentence. The Board of Parole feels that this legislation helps defeat the incentive for participation in programming or treatment, and it requires inmates to be paroled when it is clear they would not be good candidates for parole because of numerous misconduct reports or other indicators. While the Board of Parole does understand Senator Pedersen's goals to provide for supervised release at the end of a sentence, as opposed to inmates finishing their sentence in a correctional facility, we respectfully believe that reentry programs and other incentives are better, safer alternatives to mandatory parole. The board

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 19

LB 1101

feels that these are important issues that require discussion, and I would like to thank Senator Pedersen for introducing LB 1101 and giving us that opportunity. Thank you for the opportunity to appear before you. I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Casmer. Senator Aguilar.

SENATOR AGUILAR: Thank you. Thank you for being here today, ma'am. Would it be possible for the judge to say, your sentence is two to four years with a mandatory six months supervision of your release?

ESTHER CASMER: Federal systems do that at this point, but state, we do not have that law in effect.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. And thank you for your testimony, Ms. Casmer. I've heard a little bit about, and I don't know much about it, maybe you've heard more, reentry courts. I believe the Community Corrections Council has talked about a court that essentially takes an offender out of the prison system, back under their wing, in kind of a drug court environment where the offender continues to report to the court for a period of time following their release. I think there's legislation that addresses some of these issues. If I hear your testimony, you're in favor of monitoring offenders following their release from prison.

ESTHER CASMER: Yes.

SENATOR FLOOD: Yes. I guess my thought is, what, do you know anything about reentry courts? And this may be a very unfair question, and if it is, don't answer it. I'm just interested in if you have an opinion on those.

ESTHER CASMER: At this point in time, I'm limited as far as the knowledge of the reentry courts. However, the community corrections is involved in programming and implementing some law at this point in time to lessen the constraints of the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 20

LB 1101

prison environment.

SENATOR FLOOD: So there's value, in your opinion, to keeping a thumb on these folks after they get out of the system, obviously.

ESTHER CASMER: There's value in constructive leadership and programming.

SENATOR FLOOD: And I, that's what I mean. After Norfolk, we just talk about putting our thumb on people. (Laughter) Right. I appreciate it. Thank you.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne. I want to follow up on Senator Aguilar's question. I thought it was interesting. I'm not sure I understood your response. Did I understand you to say that the federal courts have the authority...

ESTHER CASMER: For supervised release.

SENATOR FOLEY: ...but our state courts do not?

ESTHER CASMER: No.

SENATOR FOLEY: They don't have the authority to...

ESTHER CASMER: They set, through their sentencing and by law, parole eligibility occurs.

SENATOR FOLEY: But they cannot mandate parole upon release...

ESTHER CASMER: No.

SENATOR FOLEY: ...as a part of the sentence?

ESTHER CASMER: No.

SENATOR FOLEY: I see. That's interesting. Would you have any reaction to a proposal to give the courts that authority?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 21

LB 1101

ESTHER CASMER: It would fall under the same category as this bill, LB 1101. If you provide no incentive for programming, no incentive for behavior changes, and you open up the door, then nothing has changed. You're creating an unsafe environment for prison officials, in many instances. You're creating an unsafe environment for society. Without change or opportunity to change, many of these individuals will not change.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Mr. Bourne. Ms. Casmer, thank you for what you do. I want the committee to know that Ms. Casmer and I are friends, now, even though we don't agree on some issues, and we have some issues. To me, I always say, it's like being married. In the Legislature, they say you can't disagree. I've been married for 35 years and my wife and I don't agree more than half the time, and I love her more than anything else in the world. Ms. Casmer is doing us a good job. I want more out of the Parole Board, and so I ask these questions. First of all, Ms. Casmer, I do want you to have time to look at this because in my closing, I'm going to go over this with the committee. And if you've got any discrepancies in what is in that form, I would like you to have the time while you're in the chair there to be able to do so.

ESTHER CASMER: Okay. Well, first of all, when these numbers came out, the numbers that will mandatorily discharge their sentences, you have to equate into that number, there are individuals who choose not to parole. There are individuals that by the time that we see them on their initial review, there is not enough time to parole them. We cannot parole them effectively less than 60 days because it takes 60 days in order for the parole officers to verify and secure a residence for these individuals. So any individual that comes before us with less than 60 days to be on parole will mandatorily discharge. It takes 60 days for the paperwork. There's nothing we can do about it. Also, we're looking at individuals that receive sentences that do not permit parole, such as flat sentences. Those individuals were mandatorily discharged. There are times when we set individuals for hearings, they come before us.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 22

LB 1101

Last month, in a prime example, we had 11 individuals that we had set for hearings and we could not parole them. And it was due to behavior, due to refusal of programming, and due to misconduct reports, of which segregation time and loss of good time was warranted. Those individuals, we will not parole them. We will not reward them for negative behaviors.

SENATOR DW. PEDERSEN: In them cases, Ms. Casmer, we have the same people coming out, though, at the end of their sentence, "jamming," with no supervision.

ESTHER CASMER: I agree, sir. However, an individual that is not willing to abide by rules and regulations, programming, within the department, they're not going to change. Are we putting our parole officers at risk attempting to supervise these individuals? Are we putting the community...

SENATOR DW. PEDERSEN: Because of their job, Ms. Casmer, I would rather put them at risk than the rest of society that has no training in working with these kind of people.

ESTHER CASMER: But we also have to look at some of these individuals that they are dangerous.

SENATOR DW. PEDERSEN: I would agree. This is not all that everything that I think we can do, but it's...thank you for what you've done for us.

ESTHER CASMER: Thank you.

SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you. Appreciate your testimony. Other testifiers in opposition?

ROBERT KLOTZ: Robert Klotz, K-l-o-t-z, from Lincoln, Nebraska. I came to speak on a different bill, but found this interesting. The thought crossed my mind that there's no incentives for an individual who has no desire to change or improve to act any differently on parole or whether they "jam." And so, if you pass this measure, I would ask that you put an amendment into it saying that any inmate who goes on parole and violates parole gets one more year in prison. Induce them, or give them encouragement to abide by the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 23

LB 1101

laws, the rules, making it safer for the parole people who are dealing with them. And give them something to think about, as well as giving, so to speak, a noose around their necks so that when you chain back, they come back for a little while. You have more time, give them more time to think about what they're doing and their actions and how it affects them as well as society. That's all.

SENATOR BOURNE: Thank you. Are there questions for Mr. Klotz? Seeing none, thank you. Next testifier in opposition? Are there any neutral testifiers? Senator Pedersen to close.

SENATOR DW. PEDERSEN: I don't usually close, as you know, colleagues on my bills in committee because I can talk to you about it. You all have a form here, general information about LB 1101. And I do want you to know I am not a bit taken aback by the Parole Board testifying against the bill. The Department of Corrections also has some problems with the bill, and they couldn't be here today, or didn't have the stamp of approval from the Governor's office to be here. But there is some questions. I had lunch with them, all of them, yesterday, and hopefully we can work out them. And what the last testifier said, I'm not so sure we shouldn't look at some kind of incentive like that if we're going to require it. The numbers, I want you to look at the numbers on this sheet. We've re-changed them, what the Chairman Casmer said, that there are numbers in there, there are people with flat sentences, of the, when you look at the 900 inmates that will "jam" their sentences within six months, 558 within six to twelve months, 367 in twelve, you can read that yourselves. Of that total, if all of them would have flat sentences, so that takes that number of there. People with flat sentences don't have a parole eligibility date. And let's see, but there's some numbers in there that the Department of Corrections has gone over twice for us. And there's some money values here. But I'm not worried near about the dollar as I am the public safety issue. We need to do something different so these people have a better chance of getting started in the future. And there's some that, you know, are going to be dangerous whether we let them out early or we let them out late. And I don't know if there's any way we could ever change the law to say, if we got that feeling, we keep them in prison forever. It is proven across the country, there's people

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 24

LB 1101, LR 274

who have, a lady up in Minnesota who travels the country doing nothing but giving lectures on parole is public safety. "Jamming" is dangerous. Thank you.

SENATOR BOURNE: Are there questions for Senator Pedersen? Seeing none. Thank you. That will conclude the hearing on Legislative Bill 1101. Senator Brashear is here to open on Legislative Resolution 274CA. As he makes his way forward, can I have a show of hands of those folks here wishing to testify in support of this next bill? I see none. Those in opposition? I see one. Welcome, Senator Brashear.

LR 274CA

SENATOR BRASHEAR: Thank you, Chairman Bourne, members of the Judiciary Committee. I'm doing better. It's the right day and the right bill. My name is Kermit Brashear, B-r-a-s-h-e-a-r. I am a citizen legislator representing District 4. I appear in introduction and support of Legislative Resolution 274CA. LR 274CA proposes a constitutional amendment to make a narrow change to the separation of powers provision of the Nebraska Constitution. It is one of two such changes that I have proposed that have also been endorsed by the Community Corrections Council, which I serve as chair. To provide some background, you will know that our government is divided into three branches, executive, legislative, and judicial, each set forth in the Constitution. Nebraska, however, has an unusually strict separation of powers clause in Article II, Section 1, of the Constitution. It reads in part, "no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others." To its credit, the Nebraska Supreme Court has taken the language seriously and has imposed strict limits on the ability of officers of one branch to exercise substantive power in another branch. Two major decisions in this area are the Conway and Murphy decisions. In the Conway decision, or case, the court held that because former Senator Gerald Conway exercised authority in the executive branch as a professor at Wayne State College, he could not simultaneously serve in the Legislature. In the Murphy case, the court determined that since the Crime Commission made substantive decisions involving, for example, the awarding of grants from public funds, Judge

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 25

LR 274

John Murphy could not sit as a voting member of the Commission. As a result of Article I and Section 1 and these cases, we must consult them whenever there is an intersection of interests between two or three branches of government. Without questioning the value of the separation of powers generally, in my experience, in this area, it seems to me that the particular constitutional provision is very strict and creates unnecessary confusion and complexity in certain cases. One such case is addressed in LR 274CA. As this committee knows, probation administration has always been located in the judicial branch. Clearly, corrections is and has been a function of the executive branch, and we have also placed parole administration in that category. I will for the purposes of this resolution attempt to steer clear of the issue of merging or restructuring the roles. I know that you have other bills in committee. Instead, I'd like to highlight the types of programming that the Community Corrections Council has been involved in developing, and the manner in which the separation of powers clause makes that programming inefficient and overly complex. We have witnessed on the Council an unprecedented level of cooperation between the various entities involved in criminal justice. Programs such as drug courts and other specialized courts have provoked the judicial branch to be more involved in the corrections process. The reentry court proposed in LB 1257 would extend that trend and entail an even greater judicial role. At the same time, the Department of Correctional Services recognizes the greater need for community based programming such as work release. And regardless of whether the political issues surrounding a merger can be worked out, we have nevertheless seen a tremendous amount of cooperation between the probation and parole offices since the inception of the Community Corrections Council. All of these efforts are made more complex by virtue of the separation of powers, which imposes strict limits on the extent to which officials of different branches can work together or join forces. It is the intent of LR 274CA to remove the separation of powers questions from cooperation among branches with respect to the supervision of offenders in the community. The amendment would allow the Legislature to set the terms of the extent to which judicial and executive branches can cooperate in this area. This particular amendment is agnostic, so to speak, with respect to a merger between probation and parole, or which branch they would be merged into. Both

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 26

LR 274

Senator Synowiecki, who has advocated merging these offices into the executive branch, and I, who have proposed merging them into the judicial branch, have signed this resolution together. It is clear to us that the judiciary will be more involved in the future in community programs such as parole, and that the correctional system will want to cooperate with judicial officials such as probation officers. This resolution would make such cooperation more cost effective and straight-forward while maintaining safeguards through the legislative control and oversight it provides. I thank you for your time and your attention, and urge your support of the resolution.

SENATOR BOURNE: Thank you. Are there questions for Speaker Brashear. Senator Chambers.

SENATOR CHAMBERS: Senator Brashear, you said "agnostic." How would that apply to what you were telling us?

SENATOR BRASHEAR: It has no particular doctrine or faith to it. I wasn't advocating a position.

SENATOR CHAMBERS: I like that. I wanted into the record exactly what you meant. Thank you.

SENATOR BRASHEAR: I can't imagine why I used that word, but I thought it might find favor.

SENATOR CHAMBERS: And you may hear it on the floor coming from somebody else. (Laughter) Thank you.

SENATOR BOURNE: Further questions for the Speaker. Seeing none, thank you.

SENATOR BRASHEAR: Thank you. I'll waive closing, Mr. Chairman. Thank you.

SENATOR BOURNE: Appreciate that. I'll check again. Are there any testifiers in support of this measure? I'm going to move to opponents. If you're an opponent, come on forward. If there are other opponents, please use the on-deck area and sign in.

ROBERT KLOTZ: I'll sign in that.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 27

LR 274

SENATOR BOURNE: Appreciate it. If there's anybody else wanting to testify in opposition, please sign in now. Any neutral testifiers come forward.

ROBERT KLOTZ: Robert Klotz, K-l-o-t-z, from Lincoln, Nebraska. Pendulum swings both ways, and it's nice if we could stay in the middle, but the separation of the executive, judicial, and legislative branches of power is the fundamental life essence of our form of government. Any consolidation of power or sharing of powers runs the risk of needless feuding between the branches of government, and can only encourage the ego of the person who is power hunger. If the executive and the judicial branches share power, who will be the arbitrator if there is feuding or disputing? The answer is, the judicial branch will decide because judging is their function. Therefore, the judicial branch will consolidate power and the executive branch will have no recourse. By doing this, you have effectively diminished the role of the executive branch. Presently, we have, for example, the scandal of the regent at the university of Lincoln as far as how he obtained his office. Attorney General challenged that in court, a gag order has been placed on it, so we have gone from one scandal to something doubly scandalous when the judge places a gag order on that. And now the Attorney General, who is an elected official, by appealing to the Supreme Court, runs the risk of going to jail or doing jail time from what I heard on the radio coming up here. And this also plays into the situation. So now the mark of a dictatorship is the consolidation of power. And our forefathers had the good sense to realize this dangerous trait, so they separated the three powers. I would not consider this resolution a mark of good sense for trying to now combine the powers, especially in light of all the judicial activism of late, that has already usurped authority. And if history can be used as a guide, this resolution would only be the beginning of one more slippery slope headed downwards on the misguided pretense, that it is expedient and will be good for us.

SENATOR BOURNE: Thank you. Are there questions for Mr. Klotz? Seeing none, thank you. Other testifiers in opposition? Testifiers neutral? Senator Brashear has waived closing. That will conclude the hearing on LR 274CA. (See also Exhibit 6) Senator Redfield is here to open on Legislative Bill 1169. As she makes her way forward, can I

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 28

LB 1196

have a showing of hands of those folks here to testify in support? I see two. Those in opposition? I see none. Neutral? I see none. Welcome.

LB 1196

SENATOR REDFIELD: (Exhibit 8) Thank you. Chairman Bourne, members of the committee, for the record, my name is Pam Redfield, R-e-d-f-i-e-l-d. I represent District 12 in Omaha and Ralston. I'm here to introduce today LB 1169. And first, I want to talk about policy, because we have approached the safety of our citizens at the hands of alcohol-related fatalities and injuries in a very distinct way. And much of that has been guided by the federal government and demands that they have put upon us and tied to the distribution of federal highway funds. Since I have been in the Legislature, there have been at least two times when we have amended the laws to tighten up and toughen our laws. And our goal was always the safety of our citizens. But I would submit to you that this year you are talking again about that issue and deciding whether, in fact, Nebraska has a cohesive policy that has actually saved lives. Currently, the first offense, someone is stopped, they're impaired by alcohol. They're found guilty of a misdemeanor, a Class W misdemeanor. The mandatory 60 day license revocation, maximum of 60 days imprisonment, a maximum of a \$500 fine. We want to get their attention. We want to make sure it doesn't happen again. We want to make sure no one is ever hurt by this driver. But during the 60 days that that license is revoked, this person has often choices to make. It's time to go to work. Something has occurred, and there is no one available to take them to work. There's not a family member, there's not a friend, so now they face a choice. They are either going to drive to work and risk being picked up without a license or they might lose their job by staying home. And so they are then, if they are picked up, guilty of a Class IV felony and they may face a fine of five years imprisonment or a maximum of \$10,000 fine or both. I have for you, if the page could distribute, federal highway fund laws under Title 23. LB 1169 faces this differently. It says for a first offense, let's mandate that they have an ignition interlock device placed upon their vehicle. Let's make sure that they can't do this again. Let's protect the public. And they

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 29

LB 1196

leave it there for a year. Now this is only in the case where their blood alcohol level is below 0.15 and it is also where there is no personal injury or property damage. If there's a second offense, let's use an ignition interlock device mandatory for five years. For a third offense, ten years. A fourth time, for life. I want to prevent accidents. I want to prevent injuries. I want to prevent heartache. And I wish that they installed these devices on every vehicle when it came off the assembly line brand new. Would that impair my civil liberties? Well, it might be an inconvenience, but a seat belt is an inconvenience. It protects my life. And if it meant that the people on the roads of Nebraska would not endanger my loved ones and your loved ones, I think that would be an inconvenience willing to bear. And so the bill that is before you proposes that you create this as an alternative offense. If, in fact, their blood alcohol exceeds 0.15, if, in fact, there is a personal injury, or there is property damage, then, in fact, we go back to the system that we have already created in Nebraska or that you will discuss under Senator Friend's bill. But I'm proposing to you an alternative. Now there will be those who will say we might lose some federal funds, and that's why I'm giving you this summary on the front to show you that under this program, under Title 23, Section 2,007, you'll find that to be eligible for the grant, if you have an alcohol-related fatality rate of 0.5 or less per million vehicle miles traveled, stop here. You qualify. And actually, if you look at our data, it looks like in 2004, we did. If you didn't, and in 2003 and in 2002, we would not have under that criteria, you move to step two. And that gives you a choice. In fiscal year 2006, you have to do four programs or activities from the list down below under (C). In fiscal year 2007, you have to do five. In fiscal years 2008 and 2009, you choose. We don't have to take a license. We could choose some others from this list. Let's be creative, let's look at federal law, and let's find an alternative. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Redfield? Senator Flood.

SENATOR FLOOD: Thank you, Senator Bourne. Senator Redfield, if I get, if I understand your proposal, right, you're proposing to do away with the license revocation provisions of our DUI statutes and instead impose ignition

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 30

LB 1196

interlock device?

SENATOR REDFIELD: In the limited instance where their blood alcohol was below 0.15, there was no personal injury, and there was no property damage, yes.

SENATOR FLOOD: What about the ALR statutes, or the ALR system where, you know, on second offense, within 12 years, the Department of Motor Vehicles doesn't allow the ignition interlock device? What do you think of that public policy?

SENATOR REDFIELD: Well, you know, it was interesting because I had just read an instance of someone in our public school system in the metropolitan area who had a second offense and there was an intervention of a number of years. And everyone was somewhat amazed because they didn't realize there was a problem, and this was the first time they knew there had a first offense, and now it was second. You have to question whether our goal is safety, and can safety be measured by a number of years in-between incidents? This person was dangerous the first time, and they were dangerous the second time because at that moment, they were impaired. And my goal would be to see that their car would not go when they were impaired.

SENATOR BOURNE: Further questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Senator Redfield, obviously this was, at least from my standpoint, a fairly anticipated discussion, so thanks for enlightening us on some of these initiatives. Would you, and this is more, I guess, out of curiosity, much of your bill, and I have to be honest, I've only read it once and I've just been glancing through again, I could be missing something, clearly, certain portions of this are clearly mandates as opposed to maybe giving the option or the opportunity for a judge to say, you know, here's a possible solution to this problem. Would you be adverse to the idea of maybe this committee discussing or possibly enhancing the language to, for lack of a better, you know, way to phrase it, to lighten up the mandate portion of it? And the reason I ask that is that I look at, sometimes you can look things as, you can really pinpoint something and say, here's a legislative solution. Something can occur, and something good, we can prove with empirical data that something good will occur if

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 31

LB 1196

we just implement this legislation. However, we can say, here, this legislation is implemented, but it's going to take a person, or it's going to take a group of people in order to guideline it, in order to drive the implementation. To me, this might not be a slam dunk. It might be a situation where judges will say, this particular person, Senator Flood, may have pointed out, needs to have his or her license taken away. This is the only way this person is ever going to figure it out. On the other hand, it might be a situation where the judge may say, look, this is the third time you've been in front of me. Clearly, you don't care whether you have a license or not. You're going to do this. So, boom, here's your interlocking device option. Right now, I don't even know if we have the interlocking device option for the judges. At times, I guess we do. But, I mean, I guess, could you speak to that? I'm looking for maybe some leeway, if your bill didn't provide it. Would you be adverse to an idea like that?

SENATOR REDFIELD: Well, what I'm proposing here is a mandate on the interlock ignition device. And if you're asking whether the judge should have the flexibility to also revoke a license, I would have to question why you would do both. And it's interesting, if you look at the federal law, actually, I have a Section 402 here, and it's interesting the way it reads because they actually give that option, but they've already revoked their license. And I thought, why would you put a device on a vehicle when, in fact, you're not going to allow the person to drive? And yet that's in the federal law now. But it is an option to do the interlock device. I think that it's important to give judges discretion, but right now, I think we reverse our discretion in allowing them discretion as to whether to allow the interlock device. And I don't think that's occurring at the rate that it should. And the one fear you have when you allow flexibility with a judge is it could be discriminatory.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Senator Redfield, I'm sorry I missed out on your testimony, but I did carry this bill at one time. Have the feds finalized what they want to do in this issue?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 32

LB 1196

SENATOR REDFIELD: The current, I've actually given you a copy of Section 2007. There is some other sections of law that actually apply here, and I have copies that I could give to people. But no, I don't think that they have finalized everything. I know that there might be some testifiers that would be able to explain if they have. But right now, there's a checklist of eight items you pick off in this one program before you lose any federal funds. And we could pick something else. Nebraska has chosen to pick the high-risk driver because, perhaps it's easier or perhaps it's because the Legislature has made it easier. We passed the law so that they could do that. But maybe some of the other programs might have a better, a more productive result, if we were using some of the other programs or some other choices. We just made that choice as a policy choice. So I can't tell you what the feds are going to do even next month or next year, but we don't know.

SENATOR DW. PEDERSEN: Well, when I carried the bill, there was, we could not have done it at that point because the feds hadn't passed it and up. And I know it's, some testifiers are coming up...

SENATOR REDFIELD: Well, actually, as I showed you under this one program, they can. Under another program, we are at risk of losing \$1.7 million in highway funds. But, the interesting thing is, the state doesn't lose them. Instead of them going to the Department of Roads, they would actually be diverted to the DMV, and they would have to be used for prevention of hazardous road conditions, which means that we could actually transfer them from DMV right back to the Department of Roads to remedy a hazardous curve or some other road hazard that we feel we need to put highway funds in. At least that's the way I read it.

SENATOR BOURNE: Further questions? Senator Redfield, the fiscal note indicates that this device is about \$800. Now is there a monthly fee associated with that or is it, you just purchase it, you install it on your vehicle, then when you utilize the device when you want to get in and drive?

SENATOR REDFIELD: There is a fee, and it comes out to about \$2 a day, and I believe that's part of that cost that you see before you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 33

LB 1196

SENATOR BOURNE: Okay. So \$800 is a fairly accurate total cost.

SENATOR REDFIELD: Yes.

SENATOR BOURNE: Okay. Other questions? Seeing none, thank you.

SENATOR REDFIELD: Thank you.

SENATOR BOURNE: We're going to move to proponent testimony, so the first testifier in support. If there are others in the audience wanting to testify in support, please make your way to the on-deck area. Welcome.

SIMERA REYNOLDS: (Exhibits 9, 10) Good day. My name is Simera Reynolds and I'm the executive director of Mothers Against Drunk Driving. Chairman Bourne and members of the committee, MADD would like to thank Senator Redfield for bringing to the table the ignition interlock discussion. MADD's high-risk driver program calls for certain driving restrictions to be applied in order to keep these drivers from interfering with public safety. There is little doubt that the high-BAC offender poses a serious risk to our communities as we go about our daily activities. In 2004 in Nebraska, 47 percent of all DUI arrests were offenders that had a BAC of 0.15 or higher. MADD strongly supports the notion of restrict, repay, and recover. Restriction for driving while suspended where the suspension resulted from a driving under the influence offense. This would include a 45-day hard suspension that is not provided for in this legislation to my knowledge. MADD supports restrictions placed on offenders by using an alcohol ignition interlock device that must be installed on the offender's vehicle for a one-year period on a first-offense when that includes 45-day hard suspension. Additionally, on the multiple offender situations outlined in the bill, MADD would support decreasing that time when the offender showed that there was no positive readings for a period of one year on the ignition interlock device. Some say this solution is too intrusive or too expensive. And on the contrary, interlocks represent a fine balance between taking a person's license away for long periods of time and letting them back on the road. There is a way that isn't punitive or unsafe, that allows an offender to maintain employment, get treatment,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 34

LB 1196

and otherwise reform their life while still keeping the rest of us safe. MADD's high-risk driver program calls for the offender to bear the burden of the cost of the technology as a way to repay the community. The cost of this program should not be a burden to the taxpayer. This is not the entire solution, however, and ignition interlocks only work while they are on the vehicle. Treatment and other sanctions are necessary to make sure a person does not recommit a DUI after the interlock device is removed. However, this is a step forward. All-told, LB 1169 makes a serious statement about what Nebraska is willing to do to protect its citizens. And there's one other thing that I just kind of would like to bring your attention to so that when we move forward, because Senator Pedersen knows that these things can often become cumbersome. And the word "owned," and it shows on page 12 and also on page 13, but when the individual, all the motor vehicles owned by such persons. That can kind of become a big, cumbersome concept. Is it the primary car? I mean, I think that that's something this community would want to look at. What does that mean, "owned"? And just so that it doesn't get bogged down.

SENATOR BOURNE: Okay. Are there questions for Ms. Reynolds? So, if I can characterize, you're in support, but not entirely. Is that...

SIMERA REYNOLDS: Correct.

SENATOR BOURNE: Okay.

SIMERA REYNOLDS: Correct.

SENATOR BOURNE: Other questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Ms. Reynolds, where is it...do we have any kind of a window of opportunity, and that opportunity necessarily a window of when the feds are going to finalize this?

SIMERA REYNOLDS: Well it's still out there, but in the language that is out there, it is a 45-day hard suspension for any first offense. That's my understanding.

SENATOR Dw. PEDERSEN: I don't have any problem with some

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 35

LB 1196

hard suspension. I do believe we need to get some consequences in there that's going to get their attention.

SIMERA REYNOLDS: And that's irregardless of whether you're a 0.15, or, I mean, if you want to do a high BAC.

SENATOR DW. PEDERSEN: Thank you.

SIMERA REYNOLDS: And I did appreciate Senator Redfield identifying a high BAC as 0.15. She struck, you know, the 0.16 and put in the 0.15 because that's where we need to move to, that 0.15 language.

SENATOR BOURNE: Further questions? Let me ask you this real quick: Would your testimony change, here's how I read the bill. The bill is silent as it relates to the penalty you would receive if you had a subsequent DUI with the interlock device in place. So here's how I read it: And then, it removes all criminal penalties for DUIs if those four criteria are in place. So here's how I read it: I could get one DUI, put an \$800 interlock device on my car. Four years later, get another DUI, and it would be an infraction because the statute is silent and there's a fall-back provision. So every four years,...

SIMERA REYNOLDS: Right.

SENATOR BOURNE: ...I could get a DUI and pay no more than the original \$800 for my interlock device.

SIMERA REYNOLDS: Right. There's quite a bit in here that is of some concern that a task force should probably look at,...

SENATOR BOURNE: So basically...

SIMERA REYNOLDS: ...because you're right. The enhancement concept has been stripped.

SENATOR BOURNE: ...yeah, it's gone. So basically, what you're, you're supportive of some sort of interlock device, even on the first offense, but coupled with...

SIMERA REYNOLDS: Maintaining an enhanced penalty concept.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 36

LB 1196

SENATOR BOURNE: Okay. Other questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. But MADD in general also supports it on other offenses, do they not?

SIMERA REYNOLDS: Correct.

SENATOR Dw. PEDERSEN: Okay.

SIMERA REYNOLDS: But what I, and I think I stated, you know, when we get to a lifetime interlock ignition, I don't even know that we should be there. Maybe that person would be in the LB 925 bill where that needs to be placed into prison and not with a lifetime interlock ignition device. And, you know, to treatment, once you get to a certain point, and if you're free on the interlock ignition device and you've passed it for several years, why shouldn't you have the opportunity to have it removed and then go about your business and be a productive citizen?

SENATOR BOURNE: Okay. Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. The machine in itself does not assure us...

SIMERA REYNOLDS: No.

SENATOR Dw. PEDERSEN: ...sobriety...

SIMERA REYNOLDS: No.

SENATOR Dw. PEDERSEN: ...or cleanliness, but there are those who do very well as long as they have it as a tool.

SIMERA REYNOLDS: That's right. It's a double-edged sword. I mean...

SENATOR Dw. PEDERSEN: Yeah.

SIMERA REYNOLDS: ...there's two, the chicken and the egg, I mean...

SENATOR Dw. PEDERSEN: I mean, to keep somebody on parole for five years and they do real well as long as they're on

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 37

LB 1196

parole. Fine. And they show they did well on, say, probation. I said parole. Probation. That they did probation and they did it successfully and they were good while they were on probation. They screwed up when they got off. Well, they showed that they did well on probation. Maybe longer probation, but actually by itself as a tool does not assure us of...

SIMERA REYNOLDS: You have, you have to come...

SENATOR Dw. PEDERSEN: ...acceptance of a disease concept and...

SIMERA REYNOLDS: ...you need to include treatment there because, an officer told me the other day, he picked up somebody two weeks after the interlock ignition device was removed from this individual's car, and he picked him up at 0.178. So, obviously, you know, treatment either wasn't utilized or it did not work at that time.

SENATOR Dw. PEDERSEN: Thank you, Ms. Reynolds.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support.

MIKE HYBL: Senator Bourne, members of the committee, my name is Mike Hybl. It's spelled H-y-b-l. I am the registered lobbyist for Ignition Interlock Systems of Iowa and Nebraska testifying in support of the concept of flexibility that has been raised with LB 1169. My client has provided ignition interlock services in Nebraska since 1989, and they're one of three entities that are certified by Department of Motor Vehicles to provide this service. And Nebraska currently is one of 44 states that do allow some use of the ignition interlock device. Senator Bourne, you raised a question about costs. With Ignition Interlock Systems of Iowa and Nebraska, for someone who has been ordered to use a device for 90 days or less, the cost is a flat \$150. Any period of time over three months is roughly \$65 a month, so I think if you do the math, that gets you about to where that, close to where that \$800 number that showed up in the fiscal note. One thing I just wanted to point out, that revocation alone, when we do suspend or revoke an individual's operating privilege, we're basically going on a hope that they will not drive. With interlock,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 38

LB 1196

it does provide individuals a way to legally drive, maintain employment, and still be able to function while giving the rest of us some security that they are not driving under the influence. My client specifically had not intended to seek legislation this year because of the issue at the federal level. The principal in the company, Jerry Stanton, has been very involved at the federal level seeking to remove and modify the requirement that for a second, subsequent offenses, there has to be a one-year hard revocation provision. The language was there in the highway reauthorization bill this past fall. Through the vagaries of conference in the Congress, the language was dropped. I know he's been back in Washington a number of times since October. There may be additional flexibility given to the states as far as the ability to use interlock as a tool, perhaps as early as April, is what they're hoping for. There's going to be a clean-up on the highway bill. With that, I would, whether it's on this bill or LB 925 or any other avenue the committee may want to use to look at expanding use of interlock, we would just pledge our intent to cooperate and hopefully be involved in dealing with that. And with that, I take any questions.

SENATOR BOURNE: Questions for Mr. Hybl? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mike, give me an idea, how many companies, corporations around in the United States, if you have an idea, are manufacturing and distributing in this arena? I mean, a lot, the competitors...

MIKE HYBL: In most states where interlock is an option, there's five to six different manufacturers that do have product out that's being used.

SENATOR FRIEND: So it's not like...

MIKE HYBL: In Nebraska, we have three companies that certified to provide...

SENATOR FRIEND: And it's not like states are contracting with a, I mean, they're saying...

MIKE HYBL: They essentially approve the device that's being used. The Department of Motor Vehicles has rules and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 39

LB 1196

regulations that outlines the requirements for an interlock provider.

SENATOR FRIEND: Yeah. I was just curious. Thanks.

MIKE HYBL: And like one of those is that every 65 days, the device that actually does do the breath test monitoring has to be calibrated at that time to make sure that it's, you know, it's operating within the tolerance that's in the device.

SENATOR BOURNE: Further questions? Mike, tell me about the device. And, yeah, I've heard about this. I don't think I've ever seen one, but I've heard they're defeatable. How does that work?

MIKE HYBL: The device, it's basically an ignition, it's another switch that's put into the ignition.

SENATOR BOURNE: So it goes into the ignition that's currently in the vehicle?

MIKE HYBL: Yes.

SENATOR BOURNE: Okay.

MIKE HYBL: And it's, and to start the vehicle, as I understand how they work, it's not merely just giving a breath sample, but it's a combination of both breathing and humming at the same time, and that's designed so you don't take a 30-foot length of hose and attach that to the end, and then, you know, push a clean air sample through it. It's fairly sophisticated in terms of you use it. But the device that my client uses, that's how it's worked. It's a combination of a tone and a breath. Some...

SENATOR BOURNE: And is the tone unique to the driver?

MIKE HYBL: No. It's basically a blowing and the tone that, at least makes it, the devices recognizes it as something other than air just being pushed through.

SENATOR BOURNE: Okay, so I get in the car, and I'm sober, and I hum and blow, and it, the car starts.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 40

LB 1196

MIKE HYBL: Right.

SENATOR BOURNE: And then I have, you know, alcohol with me. I mean, is there ever a time...

MIKE HYBL: And we take off for Scottsbluff, yeah.

SENATOR BOURNE: ...is it, yea, with a...

MIKE HYBL: There's a requirement about every hour that you...

SENATOR BOURNE: What happens? An alarm goes off? The car stalls? What happens?

MIKE HYBL: No, it doesn't shut the car down, but you do need to...

SENATOR BOURNE: A tone goes off reminding you you've got to do the trick again?

MIKE HYBL: I think, yeah, that's my understanding of it. But you do have to retest because part of what happens when that device is recalibrated, they are able to go through the, there's a memory in there, and it does register if, when failures occurred and were there a numbers of points where you did try to start the car, but you had a failure.

SENATOR BOURNE: So it's a subsequent, so, okay, a tone will go off and you have to re-blow into the machine. And if you don't, then it's just monitored and that report would eventually be, go over to probation-parole?

MIKE HYBL: And that, yeah, that would be available from the memory within the device.

SENATOR BOURNE: Okay, and then, but there's nothing if the passenger leaned over, I mean, again, it begs the question, why wouldn't the sober person drive? But, I mean, the passenger could lean over and start the car.

MIKE HYBL: There's nothing unique, you know, to the driver other than, it takes some training to be able to, you just can't hand it to somebody and have them provide both the tone and...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 41

LB 1196

SENATOR BOURNE: Unless they've been trained?

MIKE HYBL: Yeah.

SENATOR BOURNE: Okay. Do you have one of these things available that we could take a look at, the committee?

MIKE HYBL: I think we could make one available, yeah.

SENATOR BOURNE: Yeah, I'd like to see it.

MIKE HYBL: I would be happy to do that.

SENATOR BOURNE: I've heard about these for years. I've never seen one. Senator Friend.

SENATOR FRIEND: So, Mike, I just want to make clear, I mean the hypothetical that Chairman Bourne just brought to our attention, you know, (inaudible) Senator Aguilar, and he gets, he has way too much to drink, but he demands (laughter) that he should drive. He understands how the mechanism works, he cannot, I mean, it's kind of far-fetched an idea for us to be able to do, you know, the system and, it really, I'd like to see that, too. I mean, I...

MIKE HYBL: Okay. I'd be happy to arrange that for the committee.

SENATOR FRIEND: Because that's been one of our concerns, is that, not Senator Aguilar, but one of the concerns is that, you know, how many folks are out there duping the system, the disreputable folks...?

SENATOR BOURNE: Thank you. Further questions?

SENATOR FRIEND: ...not Senator Aguilar.

SENATOR BOURNE: Yeah, other than him. Thank you.

MIKE HYBL: Okay.

SENATOR BOURNE: Appreciate your testimony. It's interesting. Other testifiers in support of this bill? Are there testifiers in opposition? Are there neutral

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 42

LB 1196

testifiers? Senator Redfield to close on LB 1169.

SENATOR REDFIELD: (Exhibit 12) Thank you very much. My AA pointed out to me that I am not very well informed in this area. Obviously, I haven't taken one of these tests. It is not one-point-five, it is 0.15 that we have written in the bill for the BAC, but I knew that you would understand that. There has always been the argument that someone else could blow in and start the car for you. They talk about the grandfather who has his grandson do it. The reality is that most of these occurrences are when people are leaving bars at night and at one in the morning, you're not going to have your grandchild with you. If you're out there at the park having a great time with Senator Aguilar, my guess is you can't blow into it, either. So I think that perhaps we (laughter) overblow some of those fears and could actually stop ourselves from protecting some lives.

SENATOR BOURNE: Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne, and basically for the committee, being as I work in this field, the machines are now calibrated to your own breath. It can be very well calibrated to your breath and to your sputum. They're not all that way, but they can be. And perhaps they're, what, using them out on the road. I don't know the particular one that Mr. Hybl is representing, but I know there's the ones that I am aware of that are being used. If you're out on the road and the buzzer goes off, you better park the thing pretty soon because, if safety-wise, you have to manually blow into the hose and, if it does show alcohol, it will shut the car down.

SENATOR REDFIELD: They're very sophisticated.

SENATOR BOURNE: We'll look forward to seeing the device. Further questions? Seeing none, thank you. That will conclude the hearing on Legislative Bill 1169. (See also Exhibit 7) Senator Cornett is here to open on Legislative Bill 1009. As she makes her way forward, could I have a show of hands of those folks here wanting to testify in support of this next bill? I see two. In opposition? I see none. Senator Cornett, welcome.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 43

LB 1009

LB 1009

SENATOR CORNETT: Good afternoon, Senator Bourne and members of the Judiciary Committee. It's my pleasure to be testimony in front of you today. My name is Abbie Cornett and I represent the 45th Legislative District. This afternoon, I'm presenting LB 1009, which would provide an additional method by which to collect DNA samples for analysis as required under the DNA Detection of Sexual and Violent Offenders Act. Under this act, a person who is convicted of a felony sex offense or other specified offense on or after September 13, 1997, shall have a DNA sample drawn. LB 1009 would allow for the collection of a buccal tissue sample, which is a swab of the inside of the cheek as an alternative method of a blood draw, rather than a blood draw. Currently, state statute only allows for a blood draw by individuals who are physicians or registered nurses or who are trained to withdraw human blood. The buccal swab does not require medical personnel to be involved in the collection and is a less intrusive method. In fact, with appropriate supervision, and individual could be allowed to collect the swab themselves. The Nebraska State Patrol will have available today of an approved buccal swab collection kit for your review and illustration. And additional benefit of the buccal swab is that it presents a less expensive alternative for smaller agencies that are tasked for the collection of sample. LB 1009 also allows for the storage of DNA records relating to missing persons, relatives of missing persons, and the unidentified human remains, the purpose of which is to assist in the identification of persons who are missing and determine as to the source of unidentified human remains. The Nebraska State Patrol will provide testimony today, and I will be available to answer any technical questions you may have. And I would be happy to answer any questions you have as well. Thank you again for your consideration of this bill, and I encourage you to advance LB 1009.

SENATOR BOURNE: Thank you. Are there questions for Senator Cornett? Senator Chambers.

SENATOR CHAMBERS: Senator Cornett, where it refers to the drawing of blood on page 4, it says, starting on line 23, "Withdrawal of blood shall be performed" and so forth. Does that mean if a situation arises where blood is to be drawn,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 44

LB 1009

that it's setting standards according to which that is to occur?

SENATOR CORNETT: It has to be drawn under the prescribed method of drawing blood, which is either by a doctor, a nurse, or a person qualified to draw that blood.

SENATOR CHAMBERS: So this is not a field where we have two alternatives. The mouth swab is the preferred way and the way it's going to be done.

SENATOR CORNETT: No, I believe that you will still be able to do both methods.

SENATOR CHAMBERS: Right, but, well, I'll wait until the Patrol comes and then I'll get more details because if they're in a position where they could even take the blood or the mouth swab, in Omaha, they'll do the most intrusive, inconvenient thing they can, hoping that it will provoke somebody, and then there will be a bad problem. Then, in another part of the city, they'll make it as easy as possible, so I have to have some reassurances on that because I didn't know when you and I talked that there would ever be a drawing of blood as a way to get this sample. I thought it was all (inaudible).

SENATOR CORNETT: I didn't understand your question when you first posed it. Yes, this does give them the option of choosing blood or a buccal swab. I cannot see why a buccal swab would not be chosen over a blood draw just, if nothing else, in the expense and the ease of drawing that sample.

SENATOR CHAMBERS: You may notice that I said...

SENATOR CORNETT: I did.

SENATOR CHAMBERS: ...I haven't said buccal until just now. I said the mouth swab because if the police hear me say that, they'll think I mean they can take a belt and use a buccal to draw blood, so I have to be very careful.

SENATOR CORNETT: Well now, now it all depends on which police officer you're speaking to, Senator Chambers.

SENATOR CHAMBERS: I thank you. That's all that I have,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 45

LB 1009

though.

SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you. First testifier in support. Okay, if you just set them on the edge of the desk and they'll come around. Welcome.

CARMELLA STRONG: (Exhibit 11) Hi. Good afternoon, Senator Bourne, members of the Judiciary Committee. My name is Carmella, C-a-r-m-e-l-l-a, Strong, S-t-r-o-n-g, and I'm a forensics laboratory supervisor at the Nebraska State Patrol Crime Lab. The DNA Detection of Sexual and Violent Offenders Act requires that a person convicted of a felony sex offense or other specified offense as designed in Section 29-4,103 must provide a DNA sample for the inclusion in the Combined DNA Index System, CODIS. Current statutes require that the sample be collected upon intake to prison, jail, or other detention facility or institution or for those receiving probation at a detention facility or institution as specified by the court. The current method involves venipuncture collection of blood, which requires trained medical personnel. In numerous jurisdictions, this requires the transportation of an individual to a separate facility or, for agencies that do not have a full-time medical staff, and additional expense, as well. The buccal swab is very easy to use and is less intrusive to the individual than the blood draw. A person can easily collect the buccal swab themselves. On the back page of your handout there, it contains the information on the contents of the collection kit, and I have a kit with me today if you'd like to see it. The process is very simple for nonmedical personnel. It just involves rubbing the swabs on the inside of the cheek area for five to ten seconds. Allowing the swab to air dry for about five minutes, and then placing the sample into the collection envelope and sending it onto the lab then for testing. LB 1009 also allows for the inclusion of DNA records relating to missing persons, relatives of missing persons, and unidentified human remains into the CODIS system for the purpose of assisting with the identification of missing persons, and would provide assistance to families of the missing victims. This verbiage would not compel a family members to provide a DNA sample. However, it would allow them to do so if they so choose. Thank you for your time and consideration. I would be happy to answer any questions.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 46

LB 1009

SENATOR BOURNE: Thank you. Are there questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Ms. Strong, can you, and maybe I'm missing something here. Can you fill in, why, and I don't know if Senator, I guess I don't know if Senator Chambers sparked this thought here, but can you speak to why we'd even need to have any blood draws anymore? I mean, what is the significant difference between a, help educate us, the significant difference between the information, or the tissue that we would collect through a buccal draw and a blood draw?

CARMELLA STRONG: Actually, the information that you're going to derive from either of those, the DNA is going to be same. The reason that we currently are collecting the blood kits is that is what is written into the statutes. That's all that can be collected at this point.

SENATOR FRIEND: Okay. Then I guess the question would be appropriate. Why even have blood draws, then?

CARMELLA STRONG: At this point in time, we have the procedures in place.

SENATOR FRIEND: If, providing this passed, why have the blood draw incorporated in there?

CARMELLA STRONG: Okay. The procedures are in place. It is a little bit easier on the testing end for us to test the blood samples. However, I've also talked with some members from Corrections that already have their procedures in place as they're "intaking" inmates into evaluation and diagnostic center. They have their procedures in place already for the collection of those blood samples, and so they weren't even sure at that point when I spoke with them whether they were going to just keep the procedure they already have in place or if they would switch over. I guess it was just to give another option for those correctional facilities that don't have, or smaller county jails and things like that, probations.

SENATOR FRIEND: Okay.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 47

LB 1009

SENATOR BOURNE: Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. As far as results of the two different tests, is one quicker and possibly less expensive than the other?

CARMELLA STRONG: As far as the testing process goes, there is a step, one less step when we use the blood samples versus the buccal swabs. And that's just a step in which we find out how much DNA is actually in the sample. With the blood sample, it's a little more consistent, so we don't have to do a "quantitation" with that as we do with the buccal swab.

SENATOR AGUILAR: As far as accuracy?

CARMELLA STRONG: It would be the same.

SENATOR AGUILAR: Thank you.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: If the blood draw were eliminated from statute, period, and all that was available was the buccal swab, everybody who is going to collect DNA who's in law enforcement would use the swab method and they would be able to successfully collect enough DNA to do whatever they're going to do with it. Would that be correct?

CARMELLA STRONG: Yes. This particular statute doesn't necessarily speak to law enforcement collecting somebody, when they're a suspect in a case, per se. This is more speaking to when they get processed into corrections or on probation for collection to go into the CODIS system.

SENATOR CHAMBERS: So all this does is when they're being processed in. Then we can do away with blood altogether as far as this statutory scheme is concerned and it's not going to make all that much difference except that it might make it easier to get the sample than from somebody who might resist or be afraid of the drawing of blood.

CARMELLA STRONG: That's correct.

SENATOR CHAMBERS: Okay, so if I were tell you that I'm

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 48

LB 1009

going to make use of this bill since it was brought before us to eliminate the drawing of blood and leave only the buccal swab, within the framework of what this bill deals with, that would not prevent those who draw the blood currently from getting the samples that they need for filing of CODIS.

CARMELLA STRONG: That's correct. I can't speak to the procedures that are put in place by Corrections at this point in time. There is administrative code that speaks to how we collect and test with the blood kids, but those things would also have to be changed then.

SENATOR CHAMBERS: Well, Corrections will have to obey the law, too, and we will decide on the law. And I'm not being argumentative with you, but just, once I'm satisfied that the buccal swab methodology will serve the purposes that are sought to be served, then I'm going to try to get rid of the drawing of blood. And I want that in the record, so that's why I'm using you kind of as a sounding board. Thank you.

SENATOR BOURNE: Thank you. Senator Aguilar.

SENATOR AGUILAR: I want to follow up on where Senator Chambers was going there. Can you ever think of a possibility that would exist where a person couldn't open their mouth and allow for that swab to be taken?

CARMELLA STRONG: I can't think of anything. I mean, I'm sure it's possible if somebody were to resist, it might be hard to get a swab into their mouth if they're resisting. But at that point...

SENATOR AGUILAR: Would there be another alternative, I guess is where I'm going.

CARMELLA STRONG: Other alternative to the buccal swab collection, or to the...

SENATOR AGUILAR: To get a DNA sample if you couldn't use a blood draw because of a new law, and they couldn't open their mouth.

CARMELLA STRONG: You know, there are other sources of DNA. Any...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 49

LB 1009

SENATOR AGUILAR: This is where I was going.

CARMELLA STRONG: ...right, right.

SENATOR AGUILAR: Okay. Thank you.

SENATOR BOURNE: Further questions? Ms. Strong, let's do this. We'll assume that we can delete the blood reference from the statute, but we'll keep the record open for a few days and if you get back and think of something where that might be a problem, send us a letter.

CARMELLA STRONG: Okay.

SENATOR BOURNE: Okay. Other questions? Thank you. Next testifier in support.

DON KLEINE: Good afternoon, Senators.

SENATOR BOURNE: Welcome.

DON KLEINE: My name is Don Kleine, K-l-e-i-n-e. I'm the chief of the criminal bureau of the Nebraska Department of Justice, but I'm here testifying this afternoon in support of LB 1009 for the Nebraska County Attorneys Association, and we're supporting this bill. And I'd be happy to answer any questions.

SENATOR BOURNE: Questions for Mr. Kleine? Senator Chambers.

SENATOR CHAMBERS: Is the Attorney General still out among those who are free, or is he...

DON KLEINE: I believe so. He's still out there.

SENATOR CHAMBERS: Okay. Here's a suggestion I was going to make, because I think he's putting himself into a position to be a martyr for open courts and things that I believe in. If they come to get him, tell him, take me and I'll serve in his place.

DON KLEINE: I'll certainly let him know, Senator.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 50

LB 1009

SENATOR CHAMBERS: Okay.

DON KLEINE: But with this bill, there have been, this will make it much easier to collect DNA samples. And it saves expenses on the counties because they're not going to have to transport the prisoner to a hospital, to an ER room, and pay a med tech or a registered nurse or a doctor to draw the blood. Somebody that can very well do this right in the courtroom. And I think that there's some people who have been convicted of crimes that are placed on probation that are currently not getting into the database because it's just not getting done because they're not being transported somewhere to have a blood draw.

SENATOR BOURNE: Fair enough. Further questions? Seeing none, thank you.

DON KLEINE: Thank you.

SENATOR BOURNE: Other testifiers in support?

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB 1009. Our Bar Association committee, as I think I reported before, has both lawyers who are prosecutors and lawyers who are criminal defense lawyers on it. We looked at LB 1009 and it was our recommendation that the Legislature adopt the bill, and we do want to go on record as supporting LB 1009. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Mueller? Seeing none, thank you. Other testifiers in support? Testifier in opposition? Testifiers neutral? Senator Cornett to close.

SENATOR CORNETT: Senator Chambers brought up the option of drawing blood versus the buccal swab. The State Patrol informed me that a lot of times when they do other blood work on someone who's incarcerated that they just do the DNA sample at that time so they don't have to do two procedures. That would be the only reason that they could think of at this time, and I appreciate you leaving the record open for a few days. It was suggested that it be left up to the person whether either-or, if they need a blood draw, then

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 51

LB 1009, 1075

would you like us to do the DNA sampling at that time? And then, or do you just wish to do the buccal swab? But that's, a lot of times, they do it all at one time if they have other medical issues.

SENATOR BOURNE: Okay. And we will leave it for a few days and that way, you know, away from the committee trying to make a decision this quickly.

SENATOR CORNETT: And you could always word it as a buccal swab will be drawn unless blood has to be drawn for other reasons, as an amendment.

SENATOR BOURNE: Fair enough.

SENATOR CORNETT: Thank you for your consideration.

SENATOR BOURNE: Questions? Seeing none, that will conclude the hearing on Legislative Bill 1009. (See also Exhibit 16) The committee will stand at ease for ten minutes, and then we'll continue with LB 1075.

AT EASE

SENATOR BOURNE: Okay, we'll go ahead and get restarted. Here to open on Legislative Bill 1075 is Senator Flood.

LB 1075

SENATOR FLOOD: (Exhibit 13) Thank you, Chairman Bourne, members of the committee. My name is Mike Flood, it's spelled F-l-o-o-d, and I represent the 19th Legislative District. LB 1075 would amend Section 86-291 to expand the offenses for which the Attorney General or any county attorney could obtain a court order to intercept communications. I have a handout here. It's a letter from Sergeant Michael Bauer, the investigations sergeant with the Norfolk Police Division. I would ask that it would be passed out. I brought this bill because local and county police in the state of Nebraska have a difficult time obtaining essentially a valid order of a court to obtain records from Internet e-mail providers like Yahoo! or American Online, AOL, or other providers across the country when trying to track down evidence in a sexual assault or a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 52

LB 1075

sex crime in Nebraska. Under Chapter 81 of the Nebraska Revised Statutes, our law gives executive branch agencies of the state government the ability to administratively issue subpoenas for such information. So in Norfolk, let's say for instance we have an individual that has been making contact with someone over the Internet for the purpose of maybe inducing that individual to engage in sexual activity, and this individual that the suspect has been contacting is under the age of 15. A lot of times, law enforcement struggle trying to get this information. So Norfolk police would routinely call the State Patrol and ask the State Patrol to help them secure the information from a Yahoo! account. And the information they're looking for is obviously the IP address, which ultimately can, with the help of Yahoo! or the service provider or the ISP, can actually locate the physical address where the computer is located, and the next step would be to look at some of the communications or e-mail sent and received on that account for the purpose of building a case against the defendant. This bill essentially adds a number of crimes to Section 86-291. Section 86-291, in the green copy, as you will see, already gives county attorneys the ability to obtain essentially a subpoena that would, or an order authorizing the interception of wire, electronic, or oral communications under the statute. Right now, the crimes that are available to county attorneys to pursue such an order from the court include murder, kidnapping, robbery, bribery, extortion, dealing in narcotics or other dangerous drugs. My bill adds the following offenses: sexual assault of a child or a vulnerable adult; visual depiction or possessing a visual depiction of sexually explicit conduct of a child; or child enticement by means of a computer. Clearly, I'm adding three crimes to a list of crimes to give county attorneys the ability to obtain this information without having to go through the State Patrol. All America Online or Yahoo! or an Internet service provider is looking for is a valid order of the court authorizing this information to be released. And my primary interest is adding these sex crimes to the list that's already available in Section 86-291 to make it easier for local and county law enforcement to investigate these crimes. A lot of police departments the size of Norfolk have spent a considerable amount of money in training their investigators and performing criminal investigations where computers are involved. We have to make it easier now for law enforcement

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 53

LB 1075

to be able to access the information on the computer and trace the computer communications back to an actual physical address so that we can aid in these prosecutions. That's the basic gist of the bill, and I'm sure there will be questions. I'd be happy to answer them.

SENATOR BOURNE: Questions for Senator Flood? Senator, you indicate that you're adding the county attorney. Right now, how it works, the county attorney goes to the Attorney General to obtain those records. Is that how you said it, the IP addresses and things?

SENATOR FLOOD: A lot of times they go to State Patrol and it's routed.

SENATOR BOURNE: The State Patrol, okay. All right.

SENATOR FLOOD: Yeah, or they can go to the Attorney General.

SENATOR BOURNE: Okay. Further questions? Thank you. First testifier in support?

COREY O'BRIEN: Good afternoon, Senators. My name is Corey O'Brien, that's O-'B-r-i-e-n, and I'm an assistant attorney general under the direction of Don Kleine in the Criminal Division of the Nebraska Department of Justice. Today, I am here representing the Nebraska County Attorneys Association to voice support of LB 1075. As Senator Flood indicated, this is not a wiretapping statute or a wiretapping issue, but simply an issue related to the administration of county attorney subpoenas and expanding the power upon which they can obtain subscriber information, particularly dealing with computer crimes and Internet crimes that are exploding across this state. The key thing that they need to acquire through these records is header information regarding e-mails, IP addresses, and subscriber information so that they can go and obtain their search warrants to go and do a more-thorough of the computer records and the content of e-mails, computer records being sent, so that's a necessary first step. All that is required under the county attorneys subpoenas is that we make sure we cover the bases administrative with the service provider or the telephone company or who is it that we're requesting the records from. This isn't a search and seizure issue related to the county

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 54

LB 1075

attorneys subpoena powers and the expansion of this. The one question that I raised with Senator Flood, who I appreciate bringing this bill, is that in the statute, it says sexual assault of a child. From a technical standpoint, we define sexual assault of a child simply, as a prosecutor, as a touching incident rather than someone that actually engages in penetration with a child. And to avoid any confusion with that, we've considered some kind of language to clean that up so that we're talking about not only instances where there's penetration of the child, but also those touching incidents of sexual assault of a child. Again, I'd appreciate any questions you may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. O'Brien? Corey, how do they get this information now? I mean, you know, you watch news accounts and there are State Patrol folks looking at computers and they, you know, you've heard the arguments about they're enticing or luring these predators, and I'm not getting into that, but how do they get, it seems like they can get this information now.

COREY O'BRIEN: They can, Senator Bourne. The way that they're doing it now is absolutely burdening the State Patrol, because the State Patrol has their administrative subpoena powers upon which that they have to go through their normal chain of command, which can be an arduous process to go ahead and get that. But if you're a local sheriff, let's say out in Dundee County, and you want this information, you've got to go bag someone from the State Patrol locally, who's got to go up the chain of command until they get to the proper level that they can issue the administrative subpoena. And that's happening, but sometimes, they'll say, do I really want to go through all that effort to go through the State Patrol to get it? You know, the State Patrol has that power. We want to give that to each individual county attorney so that they are in a position to look at it, see whether it's a worthwhile request, similar to the way we do in terms of these other crimes. It is possible to do, and it is being done, but the process is awfully difficult, especially with the urgency that we need to investigate these computer crimes, and how fast these suspects, we've noted, delete the files that we're actually looking for.

SENATOR BOURNE: What other types of investigations would

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 55

LB 1075

you or a county attorney do now that, where they would have to go to the State Patrol for the, I mean, it does seem like the laundry list of offenses is fairly limited. What else do you have to go to the State Patrol for?

COREY O'BRIEN: Anything that's not listed in...

SENATOR BOURNE: Give me a sense of what some of, I recognize that. What are some of the offenses?

COREY O'BRIEN: For instance, one of the things that we were talking about when Senator Flood brought this bill was phone harassment, situations where we have domestic violence and we have someone that's phone harassing somebody. From a broader perspective, someone that calls in a bomb threat, we would have to do an administrative subpoena in that instance to maybe get the phone records that we need in order to do the proper search warrants. So those are the type of crimes, terroristic threats, someone, you know, would threaten to blow up the State Patrol headquarters or threaten to blow up the Unicameral, those are situations of where we would actually need to go to the State Patrol rather than the county attorney having the power to do their administrative subpoenas to ask the phone company for those phone records.

SENATOR BOURNE: All right. Further questions? Senator Combs.

SENATOR COMBS: I apologize for not being here for all of your testimony. I was watching the news last night and they found that girl from Lancaster County had been enticed over the computer to go down to Texas. Would this statute apply to that situation where they could get that guy's computer that he lured her down there, or no?

COREY O'BRIEN: That's precisely the situation why we believe that LB 1075 would be a more effective and timely tool for local law enforcement to have so that they don't have to go up, again, the chain of command and the many levels that they do now for the State Patrol to get the administrative subpoenas. They could bring that to us, you know, the county attorneys, let's say it happened at one o'clock in the morning, they could bring it, knocking on our door, bring it to us, and we could maybe do an expedited

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 56

LB 1075

situation so that we could get that information more quickly rather than having to wait several days. So, yes, that's the kind of situation, exactly, that it's geared for.

SENATOR COMBS: Thank you.

SENATOR BOURNE: Further questions? Thank you.

COREY O'BRIEN: Thank you, Senators.

SENATOR BOURNE: Other testifiers in support?

BILL MUELLER: Chairman Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB 1075. When our Bar Association committee that is comprised of both prosecutors and criminal defense lawyers look at LB 1075, we believe that to expand the list of offenses that were subject to obtaining a subpoena under Section 86-291 was a reasonable bit of legislation, and our committee voted to support the bill. And we do support the bill. I'd be happy to answer questions you may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Mueller? Seeing none, thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in support? Are there testifiers in opposition? Testifiers neutral?

TIM BUTZ: Good afternoon, Senator Bourne, members of the committee. My name is Tim Butz, B-u-t-z, executive director, ACLU Nebraska. I was listening to some of the testimony here and I beg the committee's indulgence in keeping the record open for a few days. I think I'm confused a little as to whether this expands administrative subpoena power or creates court sanctioned subpoenas for getting this information. I think it's expanding administrative power based on a quick conversation I just have. I think administrative subpoenas, which are not reviewed by a court, pose serious problems in terms of due process, making sure there's probable cause before collecting records and invading someone's privacy. We'd like a chance to take a look at this and get back to the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 57

LB 1075, 1146

committee within a few days with our position on it.

SENATOR BOURNE: We always do that. We'll keep it open until first part of next week. We'd be happy to take you, when we receive your letter, it will be part of the record.

TIM BUTZ: Thank you.

SENATOR BOURNE: And you did testify in a neutral capacity?

TIM BUTZ: Neutral capacity, right.

SENATOR BOURNE: Questions for Mr. Butz? Thank you. Other neutral testifiers? Senator Flood to close.

SENATOR FLOOD: Thank you, Senator Bourne. I guess briefly, I would call the committee's attention to the text of the bill on page 2, line 3, where it says the Attorney General or any county attorney may make application to the district court of this state for an order authorizing or approving the interception. And it goes on to talk about what we have in the bill. I think the bill clearly has court approval. We referenced, I think, administrative subpoenas pursuant to Section 81-119, which are available under, you know, the executive branch powers enumerated in Chapter 81, so I think this does have sufficient review by a court. Or at least that's the way that the bill reads. So maybe I need to meet with Mr. Butz and get a better understanding of his concerns. That's all I have. Thank you.

SENATOR BOURNE: Questions? Seeing none, that will conclude the hearing on Legislative Bill 1075. Senator Flood to open on Legislative Bill 1146.

LB 1146

SENATOR FLOOD: (Exhibit 14) Thank you, Chairman Bourne, members of the committee. My name is Mike Flood, that's spelled F-l-o-o-d, and I represent the 19th Legislative District. The purpose of this bill is to make certain that the Nebraska State Patrol Crime Laboratory is able to remain accredited with the American Society of Crime Laboratory Directors Laboratory Accreditation Board. In order to ensure this, accredited Nebraska State Patrol labs listed

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 58

LB 1146

under Section 29-4,105 need to be exempted from expunging records as required when a person has not been implicated by his or her DNA sample in the commission of a crime for which their sample was obtained. It is important that our State Patrol laboratories be able to maintain their accreditation in order to perform DNA testing under the DNA Detection of Sexual and Violent Offenders Act as required under Section 29-4,105 and post conviction DNA testing under Section 29-4,120(6). To keep it real simple, last year, we passed a bill where we amended Section 21-4,126. It was introduced by Senator Chambers and it essentially said that if you provide us a DNA sample and you're cleared or exonerated by the subsequent investigation by law enforcement authorities that that sample be returned to you and that your information be returned to you. And while I believe almost everybody on this committee may have supported that bill in some form or fashion, one of the problems that the law created was that the State Patrol needs to keep its accreditation. And when you have to return everything back to the individual that the information was obtained from, that complicated some of the accreditation problems that the State Patrol is having. We have two crime labs in Nebraska, one at the State Patrol and the other at the University of Nebraska Medical Center, which Omaha Police often use. Working together with the ACLU, Mr. Butz and Senator Chambers, the State Patrol, and I have been able to come together on this bill. As I understand it, we have an amendment that you should have in front of you that has been reviewed by everyone that I just mentioned. And essentially, labs may only retain DNA information or sample information for the purpose of accreditation when someone has been cleared or exonerated in an investigation. It's simply to keep our State Patrol crime lab and the UNMC crime lab and any other authorized, accredited crime lab in Nebraska to keep their accreditation. That's the long and the short of it. And if you have any questions, I'd be happy to answer them. I believe State Patrol has a representative here that will talk about what their accreditation standards are and how they need to operate to keep them.

SENATOR BOURNE: Questions for Senator Flood? Thank you. First testifier in support.

JOHN DIETRICH: (Exhibit 15) Good afternoon, Senator Bourne

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 59

LB 1146

and members of the Judiciary Committee. My name is Dr. John, J-o-h-n, Dietrich, D-i-e-t-r-i-c-h, and I am director of the Nebraska State Patrol crime lab. The Nebraska State Patrol crime lab became accredited, began the accreditation process in 2000 and received final approval in August 2004. This accreditation allowed the laboratory to meet the requirements of the DNA Detection of Sexual and Violent Offender Act and the post conviction DNA testing as outlined in Section 29-4,105 and Section 29-4,126 respectively. The purpose of LB 1146 is to exempt accredited laboratories listed under Section 29-4,105 from expunging their records as required when a person has not been implicated by his or her DNA sample in the commission of a particular crime for which the DNA sample was obtained. This would allow for the retention of DNA records within a very narrow parameter in order to be compliant with the quality assurance standards as required by the American Society of Crime Lab Directors, the Laboratory Accreditation Board, which is an acronym ASCLD/LAB. In addition to the Nebraska State Patrol crime lab, this would also include the University of Nebraska Medical Center Human DNA Identification Molecular Diagnostic Laboratory in Omaha, which is subject to the same restrictions and requirements by state statute as the State Patrol laboratory. The quality assurance standards require that the laboratory maintain documentations generated by examiners within a case file, and a yearly audit is conducted to assure the compliance with these standards. An excerpt from the American Society of Crime Lab Directors Laboratory Accreditation Board Manual was included in the handout in your information. The laboratory does not maintain any physical DNA samples, only the case file documentation. All DNA samples are returned to the submitting law enforcement agencies upon completion of testing, and this amendment would not change any of the requirements for the law enforcement agencies to purge all records and identifiable information pertaining to the person who is outlined in Section 29-4,126 of the Division IV and V. The amendment brought before you today by Senator Flood is for the sole purpose of ensuring the laboratories accredited by American Society of Crime Lab Directors Laboratory Accreditation Board can retain that status. The Nebraska State Patrol has worked with interested parties in the drafting of this amendment and believes it upholds the intended purposes of the state statute while allowing our laboratories to remain

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 60

LB 1146

accredited. I thank you for your time and consideration, and I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Dr. Dietrich? Seeing none, thank you. Next testifier in support.

DON KLEINE: Good afternoon again, Senators. My name is Don Kleine, K-l-e-i-n-e, chief of the criminal bureau for the Department of Justice. I'm here testifying as a proponent for LB 1146 for the Nebraska County Attorneys Association. We are in support of this bill. One of the issues, having dealt for a long time with forensic DNA analysis, with that type of analysis over the years, with laboratories, there was a lack of standardization or lack of accreditation for DNA laboratories around the country. That has changed. As you've heard, ASCLD now does an accreditation study of forensic DNA laboratories around the country. If they meet certain standards, they can become accredited. It's a way to keep, to make sure, or ensure that these laboratories are doing forensic DNA work the way they're supposed to. And so this bill is necessary for the laboratories in the state of Nebraska, which is the state crime lab and the DNA laboratory at UNMC to maintain their accreditation. And so we think it's a good bill in that regard. I'd be happy to answer any questions.

SENATOR BOURNE: Questions for Mr. Kleine? So, and don't freak out, anybody, when I ask this question, but why is the accreditation relevant? I mean, what happens if it's lost?

DON KLEINE: Well, there, one of the issues that came out in the beginning, say, in 1992, '93, '94, was there wasn't any standard for a laboratory, as such. You know, during a trial, there might be questions at pretrial hearings about, well, you did your DNA testing this way. Is there some sort of a standard? Or, is your laboratory accredited by some national organization? And there wasn't, and so there was a question with regarding, well, how come there's not some body that's kind of checking on the laboratories to make sure they're doing it the way that they're supposed to be doing it. So now there is. But...

SENATOR BOURNE: So if the accreditation is lost, it'll simply be challenged in court...

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 61

LB 1146

DON KLEINE: Sure.

SENATOR BOURNE: ...and say you're not accredited, or how do you, or you'd have a bigger burden of proving....

DON KLEINE: Yeah, the accreditation mean that, you know, they're meeting some sort of standard by this overseeing agency of all these laboratories that says, these are the minimum standards you have to make. And by keeping some records, that's how the accrediting facility can come in and make sure that they're doing the testing the right way.

SENATOR BOURNE: Okay. Other questions? Seeing none, thank you.

DON KLEINE: Thank you.

SENATOR BOURNE: Other testifiers in support.

TIM BUTZ: Good afternoon, Senator Bourne, members of the committee. My name is Tim Butz, B-u-t-z, executive director, ACLU Nebraska. Not often you see me get up here and testify in support of a bill that's also supported by the State Patrol and members of the Attorney General's Office, but...

SENATOR BOURNE: And Senator Flood, I might add. (Laughter)

TIM BUTZ: ...and Senator Flood, so let's all enjoy the moment. (Laughter) I think you just touched on a critical question, and why we're supporting the bill as amended by Senator Flood today. We could not support the bill without the amendment because I think it would create a huge hole through which law enforcement could find ways of evading the intent of Senator Chambers' bill, LB 755, last year. Outside review is critical when it comes to the crime lab. I think without accreditation, you have nobody who is watching the people or holding them accountable for the results of the lab. And I would only point to what's happened over the last few years in Texas, with the Houston Police Department and their crime lab, and the number of people who were erroneously convicted or even subjected to some sort of biased testing by their laboratory there. This process of allowing the State Patrol crime lab to be

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Judiciary
February 9, 2006
Page 62

LB 1146

accredited brings an outside view. I talked to the director of the lab yesterday, and he confirmed for me that it's not their own internal review that gets them certification. It's people coming from the outside and looking at things and making sure that the numbers add up, the tests add up, and everything is appropriate in the way tests are conducted. And I think that does the people of this state a great service. And with that, if you have any questions, I'll be glad to answer them.

SENATOR BOURNE: Thank you. Questions for Mr. Butz? Seeing none, thank you.

TIM BUTZ: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Flood waives closing. That will conclude the hearing on Legislative Bill 1146 and the hearings for this afternoon. Thank you.